

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

CORAM

The Hon'ble Mr.Justice N.Kirubakaran

Writ Petition No.40311 of 2016

S.Azhagu Thennavan

...Petitioner

Vs.

1. The Chief Engineer,
Construction and Maintenance,
Highways Department
Guindy, Chennai - 600 025.
2. The Divisional Engineer,
Highways,
Construction and Maintenance,
Saidapet, Chennai - 600 015.
3. The Assistant Divisional Engineer,
Highways (H)
Construction and Maintenance,
Tambaram Sub Division,
Highways Department,
Chennai - 600 042.
4. The Commissioner,
Tambaram Municipality,
Chennai.

...Respondents

Prayer:-

Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the third respondent to consider the petitioner's representation dated 04.11.2016, to permit and to issue licence to the petitioner for running the bunk stall and consequently, forbearing the respondents not to remove and disturb the petitioner's bunk stall at East Tambaram Velachery Road opposite to MC.C.College.

For Petitioner : M/s.R.Indumathi
For Respondents
1 -3 : Mr.T.M.Pappiah
Special Government Pleader
For Respondent-4 : Mr.P.Srinivas

O R D E R

The prayer in this Writ Petition, is for issuance of a writ of mandamus to direct the third respondent to consider the petitioner's representation, dated 04.11.2016, and to permit and issue licence to the petitioner for running a bunk shop, and consequently, to forbear the respondents from either removing the bunk stall or disturbing the petitioner's from running the Shop.

2. Heard the learned counsel for the petitioner, the learned Special Government Pleader for respondents 1 to 3 and Mr.P.Srinivas, the learned counsel for the fourth respondent.

3. The case of the petitioner is that, he is a physically challenged person, and he is running a Bunk Stall, at East Tambaram, Velacherry Road, opposite to M.C.C. College, Tambaram, for which, he has obtained licence on 21.10.2016. However, since the third respondent is disturbing the petitioner from running the Bunk Shop, the petitioner, setting out his grievance, made a representation, dated 04.11.2016, seeking permission/licence for running the Bunk Shop. Since no response is forthcoming from the third respondent, this Writ Petition is filed.

4. When the Writ Petition came up for hearing before this Court yesterday, (17.11.2016) the fourth respondent was directed to appear before this Court and explain as to what made him to grant permission/licence to run the bunk shop, vide receipt, dated 21.10.2016 initially, and why, subsequently, the petitioner has been prevented from running the same, and directed the Registry to list the Writ Petition today (18.11.2016). Accordingly, the Writ Petition is listed today, and when it came up for hearing, the fourth respondent, who is present in Court, as per the direction issued by this Court, vide order, dated 17.11.2016, produced a file for this Court's perusal, and submitted that the petitioner obtained licence, by showing his residential address, (No.22, Tamil Poonga Street,

Irumbuliyur, West Tambaram) as place of business and thus, played fraud. This Court also, to ascertain the veracity of the said submission, gone through the file, and on perusal of the file, it came to light that, the petitioner, by showing his residential address as his place of business, applied for permission/licence to run the Bunk Shop, which is not permissible in law, and that is why, he has been prevented from running the Shop.

5. Thus, in view of the above facts of the case, this Court is of the firm view that the petitioner has hoodwinked the respondents to obtain permission/licence to run the bunk shop, by showing his residential address as his place of business, and not stopped with that, by suppressing such material facts, he has approached this Court, by way of filing the present Writ Petition, alleging that, despite obtaining licence to run the Bunk Shop, has been disturbed by the respondents. The act of the petitioner, in playing fraud for obtaining licence and approaching this Court with unclean hands, is highly reprehensible. Hence, this Court deems fit not only to dismiss the Writ Petition but also to impose heavy cost on the petitioner for suppression of material facts, as suppressio veri suggestio falsi. However, taking note of the fact that the petitioner is a physically challenged person, this Court is not inclined to be harsh, and magnanimously enough, stops with dismissing the Writ Petition.

6. Accordingly, the Writ Petition is dismissed. However, this Court is inclined to observe that licence cannot be granted to run a Shop on the road margin/kerb/platform, as these places should be used for the purpose for which they are meant and reserved, viz., for the pedestrians/ passer byers to utilize, and if permissions are granted to run the bunk stall on those places, the same would obviously cause traffic problem, and accidents due to congestion.

7. For the reasons stated above, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar CS (III)

/ True Copy /

Sub Assistant Registrar

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To

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+1CC to Government Pleader, SR 67938

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SSI (CO)
PSI 10/02/2017

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